

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HSIN LIN,

Plaintiff,

v.

SOLTA MEDICAL, INC.,

Defendant.

Case No. 21-cv-05062-PJH

DISCOVERY ORDER

Re: Dkt. No. 106

Before the court is the parties' fifth joint discovery dispute letter. Dkt. 106. Having read the parties' submissions and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

The parties present two issues. First, they dispute the appropriate length and scope of plaintiff's second deposition. Second, they dispute whether defendant must produce images that were part of otherwise-produced complaint files.

A. Second Deposition of Plaintiff

Solta Medical, Inc. ("Solta") seeks four additional hours to depose plaintiff. Plaintiff has already sat for a 7.5-hour deposition. Federal Rule of Civil Procedure 30(d)(1) limits a deposition to 1 day of 7 hours absent agreement between the parties or a court order. "The party seeking a court order to extend the examination, or otherwise alter the limitations, is expected to show good cause to justify such an order." Fed. R. Civ. P. 30 advisory committee's note to 2000 amendment.

Solta argues that good cause exists for the extension for three reasons: first, defense counsel left the deposition open, and plaintiff's counsel agreed; second,

1 plaintiff's counsel's extensive speaking objections consumed an undue amount of
2 deposition time; and third, the deposition required a translator, which when compounded
3 with plaintiff's counsel's lengthy speaking objections consumed an undue amount of
4 deposition time. Plaintiff addressed only the first argument.

5 "The rule directs the court to allow additional time where consistent with
6 Rule 26(b)(2) if needed for a fair examination of the deponent. In addition, if the
7 deponent or another person impedes or delays the examination, the court must authorize
8 extra time." Id. "Parties considering extending the time for a deposition—and courts
9 asked to order an extension—might consider a variety of factors. For example, if the
10 witness needs an interpreter, that may prolong the examination." Id.

11 Defendant's argument that the use of a translator—coupled with the fact that
12 plaintiff's first deposition occurred nearly a year ago—establishes good cause to extend
13 plaintiff's deposition an additional four hours, during which time defense counsel may
14 question plaintiff on any relevant topic.

15 **B. Photographs of Other Patient Burn Injuries**

16 The parties dispute whether Solta must produce images of other patients that were
17 part of otherwise-produced complaint files. As part of discovery, plaintiff timely requested
18 Solta's internal files concerning other people who complained about Solta's machine.
19 The court ordered production of these files, subject to some redaction of personal
20 identifying information of non-party patients. Photographs are normally part of those
21 complaint files, and Solta failed to produce those photographs without notifying plaintiff.
22 Plaintiff learned about the existence of those photographs through depositions.

23 Solta first argues that the request is untimely. Second, Solta has declined to
24 produce those photographs because they are protected patient information under the
25 Health Insurance Portability and Accountability Act ("HIPAA") and California law.

26 First, Solta's argument that the production request is untimely is unavailing. The
27 request was timely; Solta simply failed to produce the responsive materials. Solta cannot
28 escape its discovery obligations by silently withholding responsive materials. Even if it

1 could, Solta must produce those materials pursuant to its ongoing obligation to
2 supplement or correct its responses upon learning that in some material respect the
3 disclosure or response is incomplete or incorrect. See Fed R. Civ. P. 26(e).

4 Second, Solta's argument that it cannot produce these relevant materials because
5 of federal and California privacy laws is unavailing. It is true that personally-identifying
6 materials are subject to various privacy laws, and that photographs of faces can in some
7 circumstances be considered personally-identifying materials. But protected health
8 information can be shared and produced pursuant to certain exceptions, including court
9 proceedings. For example, a party is permitted to disclose protected health information
10 under HIPAA "in the course of any judicial or administrative proceeding . . . [i]n response
11 to an order of a court or administrative tribunal". 45 C.F.R. § 164.512(e)(i). It may also
12 do so "[i]n response to a subpoena, discovery request, or other lawful process, that is not
13 accompanied by an order of a court or administrative tribunal" if a "qualified protective
14 order" is in place binding the receiving party. 45 C.F.R. § 164.512(e)(ii)(B). The
15 protective order must prohibit "using or disclosing the protected health information for any
16 purpose other than the litigation," and require "the return to the covered entity or
17 destruction of the protected health information (including all copies made) at the end of
18 the litigation or proceeding." 45 C.F.R. § 164.512(e)(v).

19 Here, the parties have stipulated to a protective order which protects the third
20 parties' medical records. Stipulated Protective Order, Dkt. 47 ("PO"). The protective
21 order satisfies the requirements of HIPAA because it (1) prohibits the parties from using
22 or disclosing the protected health information for any purpose other than the litigation or
23 proceeding for which such information was requested (PO ¶ 7); and (2) requires the
24 return or destruction of the protected material at the conclusion of the litigation (PO ¶ 13).
25 See 45 C.F.R. § 164.512(e)(v). Thus, the protective order is adequate under HIPAA to
26 protect third party information, and the materials may be produced subject to the
27 protective order's "CONFIDENTIAL" designation. Courts routinely require such
28 production. See, e.g., F.G. v. Coopersurgical, Inc., Case No. 24-cv-01261-JST, 2024 WL

2274448, at *5 & n.4 (N.D. Cal. May 20, 2024) (“The production of such information shall be subject to a qualifying protective order.”); Stallworth v. Brollini, Case No. 11-cv-04841-JSW-LB, 2013 WL 2156267, at *2 (N.D. Cal. May 17, 2013) (“The relevant rules allow production pursuant to a protective order.”); Hutton v. City of Martinez, 219 F.R.D. 164, 167 (N.D. Cal. 2003) (“HIPAA does not preclude production of the medical records”).

Similarly, the California Confidentiality of Medical Information Act (“CMIA”) prohibits California health care providers from disclosing medical information, except as permitted by California law. Cal. Civ. Code § 56.10. CMIA does not preclude disclosure here, as it permits a health care provider to disclose medical information pursuant to “[a] court order” (Cal. Civ. Code § 56.10(b)(1)), “a subpoena”, or “any provision authorizing discovery in a proceeding before a court” (Cal. Civ. Code § 56.10(b)(3)).

Accordingly, even though the photographs at issue may be the kind of identifying material that should be protected, given the importance of counsel’s and perhaps experts’ ability to compare injuries, the materials are relevant, and the protective order in this action permits Solta to produce them in compliance with the privacy statutes it identifies. Solta is therefore required to produce the requested photographs of third-party persons in its complaint files.

However, plaintiff and her counsel are strongly admonished that these CONFIDENTIAL materials must be handled in compliance with the terms of the governing protective order. Given plaintiff’s counsel’s prior disclosure of information in violation of the protective order, any further violation will result in sanctions.

IT IS SO ORDERED.

Dated: June 5, 2024

/s/ Phyllis J. Hamilton
 PHYLLIS J. HAMILTON
 United States District Judge